

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED

2004 APR -1 AM 10:28
CLERK U.S. DISTRICT COURT
TAMPA, FLORIDA

UNITED STATES OF AMERICA

vs.

Case No. 8:03-CR-77-T-30TBM

GHASSAN ZAYED BALLUT
_____ /

**DEFENDANT GHASSAN BALLUT'S REQUEST FOR ORAL
ARGUMENT ON APPLICABILITY OF LIMITATIONS TO COUNT 19**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, requests this Honorable Court to hear brief oral argument on the applicability of the statute of limitations to Count 19 of the Indictment, and as grounds therefor states:

1. In the Court's Order of March 12, 2004, in which the Court addressed the Defendant's statute of limitations argument as to Count 19 in the Defendant's Motion to Dismiss or Strike (Dkt. 200), the Court directed the Defendant and the Government to provide memoranda of law on the applicability of the statute of limitations to Count 19.

2. The Defendant's Memorandum of Law argues that the five-year limitations period of 18 U.S.C. § 3282 applies to Count 19 and was not tolled or extended, and that the Indictment was filed well past the end of the limitations period.

3. The Government's Response argues that the limitations period was extended under 18 U.S.C. § 3292 by the In Camera and Ex Parte Order of the Honorable Susan C. Bucklew on March 21, 2000, attached to the Response. Specifically, the Government states that it submitted a request to Israeli authorities for evidence under a Mutual Legal Assistance Treaty in March 2000, thus extending the limitations period for Count 19.

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4. The Defendant wishes to be heard on the issue of whether 18 U.S.C. § 3292, the In Camera and Ex Parte Order of March 21, 2000, and the Mutual Legal Assistance Treaty pertain to Count 19 and extend the limitations period.

5. The Defendant also wishes to obtain additional discovery from the Government pertaining to the application pursuant to the Mutual Legal Assistance Treaty before the Court determines this issue. Such a request was mailed to the Government on December 3, 2003, attached hereto as Exhibit A and is renewed by the service of this Request.

6. The Defendant has good reason to believe that this same issue implicates 22 other counts of the Indictment in which the Defendant is not charged, specifically Counts 5 through 18 and 20 through 27, which are Travel Act charges occurring on dates more than five years before the filing of the Indictment, and therefore the significance of this issue merits oral argument.

WHEREFORE, the Defendant requests oral argument on the applicability of the statute of limitations to Count 19 of the Indictment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce G. Howie", is written over a horizontal line.

Bruce G. Howie
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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S.

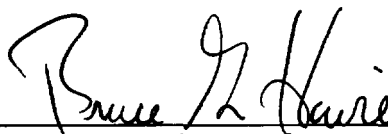
Mail to the following this 31st day of March, 2004.

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December 3, 2003

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Re: United States vs. Ghassan Zayed Ballut
Case No. 8:03-CR-77-T-30TBM

Dear Mr. Furr:

At pages 31 and 32 of the Consolidated Response of the United States to Mr. Ballut's Motion to Dismiss or Strike Counts One through Four, Nineteen, Thirty-Six through Thirty-Eight, and Forty through Forty-Two ("Response"), dated October 27, 2003, the United States argues against Defendant Ballut's position that Count Nineteen is barred by the statute of limitations by stating that the limitations period was extended by 18 U.S.C. § 3292. The United States notes that a request for evidence pursuant to a Mutual Legal Assistance Treaty (MLAT) was submitted to the Israeli government in March 2000. It is further stated that the Court entered an order holding that § 3292 applied. Finally, it is noted that the documents received from this request are described in Section C of the provided discovery index and that production of evidence continues.

It is understood that expiration of the limitations period does not divest the Court of subject matter jurisdiction, but rather the limitations issue constitutes an affirmative defense which must be asserted at trial by the defendant or else it is waived. *United States v. Najjar*, 283 F.3d 1306, 1308 (11th Cir. 2002). Because we intend to persist in this defense as to Count Nineteen, it is Mr. Ballut's position that the items described in the United States' Response on this point are material to preparing our defense and are therefore discoverable under Federal Rule of Criminal Procedure 16(a)(1)(E)(i) as well as the Court's Pretrial Discovery Order.

This is a request that you provide Mr. Ballut through me with the following items at your earliest opportunity:

EXHIBIT A

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- (1) A copy of the request to the Israeli authorities for certain evidence described in the United States' Response, including any documentation concerning the date on which the request was made.
- (2) A copy of the Court's Order holding that 18 U.S.C. § 3292 applied, as described in the United States' Response.
- (3) Copies of the Mutual Legal Assistance Treaties described as "MLAT #1" and "MLAT #2" in Section C of the discovery index.
- (4) Copies of any items that support the United States' statement in the Response that "[p]roduction of evidence from Israel continues."
- (5) Copies of any items the United States intends to use to prove the allegations in Count Nineteen (as described in Overt Act 170 of Count One) that are not listed in Section C of the discovery index.

Please advise me at your earliest opportunity if you are declining to provide Mr. Ballut with any of these described items that are in the United States' possession, custody or control along with your grounds for declining. Thank you for your consideration to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce G. Howie". The signature is fluid and cursive, with a large initial "B" and "H".

Bruce G. Howie